

DHF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NICHOLAS ZIMMERMAN,	:	
	:	06 CV 1007 (ARR)(LB)
Petitioner,	:	
-against-	:	<u>ORDER</u>
	:	
SUPERINTENDENT JOHN BURGE,	:	
Auburn Correctional Facility,	:	
	:	
Respondent.	:	
-----	X	
ROSS, United States District Judge:		

Petitioner Nicholas Zimmerman filed a petition for writ of habeas corpus in the Northern District of New York on February 16, 2006. By order of the District Court for the Northern District of New York dated February 22, 2006, the petition was transferred to the Eastern District of New York; the petition was received in the Eastern District of New York on March 6, 2006.

In March 2006, petitioner submitted an audiotape, which is Exhibit G to his habeas petition, to the U.S. District Court for the Northern District of New York. Because petitioner's habeas petition had been transferred to the Eastern District of New York, the District Court for the Northern District of New York returned the audiotape to petitioner with instructions to submit the tape and all further communications to the Eastern District of New York. However, the audiotape was apparently confiscated when it arrived at the Auburn Correctional Facility, and petitioner not permitted to review the tape. Petitioner's grievances regarding this matter were denied, and petitioner was informed that he needed "express instructions from the judge" to be permitted to review legal tapes. See IGRC Response, 4/12/06. Petitioner then requested that Inmate Records mail the audiotape in question to this court.

Although petitioner states that he submitted a copy of the audiotape to the Queens District Attorney's Office, respondent does not currently have a copy of this tape. The parties have accepted the court's June 13, 2006 proposal to assure that all parties receive copies of the audiotape. See Order, 6/13/06. Additionally, the New York State Office of the Attorney General, which represents the respondent in this matter, has represented that it will have the audiotape transcribed, and provide copies of the transcription to both petitioner and the court.

Therefore, the court will send the original tape to the Office of the Attorney General. The Office of the Attorney General is hereby ORDERED to:

- (a) create two copies of the tape;
- (b) have the conversation on the tape transcribed;
- (c) send one copy of the tape and a copy of the transcript to petitioner, along with a copy of the court's June 11, 2006 letter to the Superintendent of the Auburn Correctional Facility; and
- (d) return the original audiotape submitted by petitioner to the court, along with a copy of the transcript.

Respondent's response to the Order to Show Cause shall be served and filed within three weeks of receipt of the audiotape, by August 4, 2006. Petitioner's reply, if any, shall be served and filed by September 1, 2006.

SO ORDERED.

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Allyne R. Ross  
United States District Judge

Dated: July 11, 2006  
Brooklyn, New York

**Service List:**

**Petitioner:**

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**Respondent's Attorney:**

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